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YALE LAW JOURNAL

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THE influences in modern life tending to sap and destroy men's independence of character are very strong. The substitution of *finesse*, and of a certain animal shrewdness for straightforward action and courageous declaration of principles are unfortunately not the monopoly of politics alone. Everywhere the instincts of the fox are at a premium ; the instincts of the true man at a disadvantage. The chief essential to success too often is having "a pull," usually obtained by blacking the boots or persistently twitching the coat-tails of the powerful or wealthy. The old-fashioned symbol of life was a mountain path, rugged and steep, but with the crown at the end. The modern idea, apparently, is to deftly dodge through social or other doors left carelessly ajar and carry it off with courteous theft. Much of this is due to the appearance of classes in our modern life. The tendency of modern business is to concentrate the power of giving opportunity and place in the hands of a few ; the powerless many must get them as best they can. Our railroad system, employing its hundreds of thousands is said to be practically controlled by half a score of men. It is getting to be the same everywhere. Can there be any true democracy with this inequality of position ? Inequality of property and power mean the dependency of inferior upon superior. One result of this is the standard so universally accepted, that nothing succeeds like success, and the recognition of shrewdness as a higher gift than sincere beliefs. The schemer and wire-puller too often comes to the front honored in

inverse proportion to his high aims. Advancement everywhere is too often a matter of favoritism. "Everything," said a famous Yale professor, "goes by friendship in modern life." The danger of losing all sap and becoming greedy time-servers is the greater because it is insidious. It is in the air we breathe. It will destroy all manliness unless men are on their guard. It is better to succeed slowly—even not at all, and maintain self-respect, than rapidly, and have it trampled down under foot. It is better to starve than to be kennelled in any man's back yard. To be one's self is above all honor, fame, or pecuniary reward. But the road of this independence, even when it is a thoughtful independence, is a hard and thorny one to travel. It is full of sharp and wounding rocks; on every side selfish philistines ready to drag down, to jeer and deride and make effort as disagreeable as possible. Endeavor and achievement will meet too often with the ridicule of the cowardly, and the dishonest slanders of the base. Professional honors are likely to fall first to the servile, political and social recognition to those distinguished by an eminent capacity for saying, knowing and doing nothing in an agreeable way. But a true recognition and fair play will come at last. Even if not, the words of the poet will remain no less true :

"Not failure, but low aim is crime."

* * *

REFORMS in criminal law and criminal procedure have progressed much less rapidly than in the so-called civil common law, and for obvious reasons. The High Court of Chancery in England, whose extensive powers came into being as a protest against the harshness and rigidity of the administration of the Common Law Courts, and the Courts of Equity that have succeeded it both in England and in this country, have made their influence felt so powerfully that equitable and legal principles have become practically fused in essence even if often applied separately in practice.

But no wise Chancellor or Court of Equity seem to have wielded an equal influence in the domain of purely criminal law and procedure; changes have been slow and often ineffectual to remedy the abuses they sought to lessen or remove and great practical injustice is almost every day being done in our criminal courts under due form of law.

I.

In the first place we call attention to the provisions of statute or the growth of custom in the matter of furnishing counsel in

both our petty and higher criminal courts for accused persons who are unable by reason of poverty to secure counsel for themselves. It has been said by high authority "that it is to the shame of our judicial system that the poor man has few rights which he can maintain if he is unable to procure counsel to fight his battles."

In our petty criminal courts, especially in the great centers of population, the accused falls an easy victim to the legal "shark," a kind of tolerated legal vermin devoid alike of honesty, learning and industry, who loiters about our jails and police-courts.

And in the higher criminal courts, when the accused is put to plea and no counsel appears, it is frequently the case that counsel are assigned from the chance occupants of the attorney's benches, and as it is a matter of general knowledge that our best lawyers do not frequent the criminal courts, the assigned attorney is usually some young and inexperienced aspirant for legal honors whose more legitimate sphere would be preparing briefs in some older attorney's office and laying the broad foundation of a career of usefulness in the law, but who, desiring to walk before he can creep, seeks the cheap notoriety of the petty criminal trial as a stepping-stone to professional success. Such a condition of things is an injury not alone to the young lawyer but much more to the prisoner whose liberty and perhaps life are made the plaything of inexperienced amateurs.

If there is a remedy, and we believe there is, is it not in the direction of the State employment of *People's Counsel*, of equal rank and importance with the State's attorney (or district attorney, whatever the nomenclature may be), whose duty it shall be to defend all persons charged with criminal offenses who cannot afford to hire counsel for themselves. Surely a nation which guarantees life, liberty and the pursuit of happiness in its constitution, and a common law whose fundamental doctrine is that "better a hundred guilty men should go free than one innocent man suffer," ought to compass this reform.

II.

No chance sojourner in the court-rooms of our land is so unreliable, so intangible and so illusionary as the medical expert.

There seems to be no medical aspect of a criminal or civil case, upon which learned experts with voluminous verbosity do not expound to a listening public plausible explanations of medical phenomena.

The problem is certainly more puzzling than the one propounded in our first inquiry.

The verdicts in two of the most famous criminal trials of recent times turned almost entirely on expert testimony of learned professors of the science of medicine and surgery. And yet pitted against the experts of the State were other experts equally learned, equally verbose, equally plausible and equally correct, at least to the non-professional mind, and yet the juries believed one coterie of those experts and disbelieved the other, with the result that two human souls are swung into eternity on what at best is a fearful uncertainty.

Is such a condition of things right, is it just, is it in accordance with the spirit of American institutions, is it not a hideous deformity in our criminal procedure?

Is there no better way by which we can arrive at the fundamental verity of medical phenomena than by the hap-hazard guess of a jury, bewildered by absolutely contradictory testimony?

Medical experts whose honesty of purpose and purity of life are beyond reproach differ irreconcilably in giving testimony on the same state of facts, and strange to say, their testimony is almost always tinged with the coloring of the side that calls them.

The first step in any reform on this subject must be to divorce the medical expert from the influence, conscious or unconscious, of the fee of the side for which he is testifying.

The only rational suggestion of a reform, of which we are aware, fell from the lips of an aged and honored jurist of Connecticut, whose long experience as the presiding officer of many criminal trials gives his remark almost the weight of authority. It was that "some kind of State employment of a permanent corps of medical experts, subject to call of either side in a legal controversy, whether civil or criminal, might solve the problem."